an agent. There is, however, no doubt as to the nature of the operation that was being carried out.

What happened was that persons desiring to participate staked amounts of money on what they considered would be the last three digits or the last four digits of the number of the ticket which proved to be the winning ticket in the sweepstake organised by the Singapore Turf Club in connection with a particular horse race to be run at Singapore on 7th May, 1955. If the digits selected proved to be the correct ones then the person making the stake would be paid $700 or $4,000 for each dollar staked according as to whether he had placed his stake on three or four digits. Presumably, though there was no evidence of this, stakes would also be accepted in respect of the last two digits in which case presumably the amount to be paid in the event of the forecast proving correct would be $70.

There can be no doubt that such an operation constitutes a lottery within the meaning of the Common Gaming Houses Ordinance for it is a method of distributing money according to pure chance. To my mind, however, it is clear that where such an operation is conducted by a single person or group of persons in relation to a single specific sweepstake then there are not a number of separate and distinct lotteries according as to whether two or three or four digits are staked upon but the whole operation constitutes a a single lottery.

The Ordinance defines a lottery as follows:—

"Lottery" includes any game, method, or device whereby money or money's worth is distributed or allotted in any manner depending upon or to be determined by chance or lot, whether the same be held, drawn, exercised, or managed within or without the Federation.

Whether this particular type of lottery is to be described as a game or a method or a device I do not see how it can be said that there is more than one game or method or device or that there is more than a single distribution on each occasion on which it is organised simply because it is open to the persons participating to place their stakes upon different concatenations of circumstances when each concatenation of circumstances is to be determined by the same chance, that is to say, by what proves to be the winning number in a particular sweepstake.

I would draw an analogy with the game of roulette. Here, the players place their stakes upon different circumstances upon red as against black, upon odd as against even or upon individual numbers, and the amount paid depends on the circumstance on which the stake has been placed. The question, however, whether in each case anything is payable at all depends upon a single circumstance, that is to say, the final destination of the ball when the wheel comes to rest. In such a case it seems clear there is a separate lottery on each occasion when the wheel is spun and the ball is thrown but it would be an abuse of language to say that on each such occasion the persons who placed their stakes on the red were participating in a different lottery from that participated in by those who placed their stakes on the odd or that participated in by those who placed their stakes on individual numbers, or that the person in charge of the operation was conducting anything but a single lottery.

I called for this particular case in revision because there appeared to be some doubt in the minds of Magistrates on the point I have dealt with. As regards the case itself, I think that justice will be done if I set aside the conviction on the second charge and increase the sentence in respect of the first charge to a fine of $900 or six months imprisonment in default of payment.

Order accordingly.

CHIN CHOY v. PUBLIC PROSECUTOR

[C. A. (Mathew C.J., Wilson and Abbott JJ.) October 8, 1955]

[K. L. — F.M. Criminal Appeal No. 42 of 1955]

Criminal Procedure Code (Cap. 6), ss. 165 and 183(ii) — Wrongful joinder of charges — Whether this constitutes an illegality or an irregularity — Charges not capable of being tried together — Practice — Emergency Regulations, 1948, reg. 5(1) — Emergency Regulations, 1951, reg. 4(1)(a) and (b).

The appellant in this case was charged with two offences of consorting contrary to reg. 5(1) of the Emergency Regulations, 1948, an offence of being in possession of a revolver contrary to reg. 4(1)(a) of the Emergency Regulations 1951 and an offence of being in possession of ammunition contrary to reg. 4(1)(b) of the Emergency Regulations, 1951. The period which these offences covered were from 1948 to 1955. He was asked to plead to these four charges and eventually pleaded guilty to the two charges which related to consorting and claimed trial to the two charges under reg. 4.

Held: (1) the offences did not form part of the same transaction and were therefore wrongly joined; (2) the trial together of the four charges was an illegality — the appellant was required to plead to four charges which were joined and the fact that he pleaded guilty to two of them does not cure the original illegality.

Semble: when charges are wrongly joined, the prosecutor should be asked to elect before the pleas are taken which charge or charges he wishes to proceed on, and thus avoid a trial which is illegal and bad. As a practice, charges which are not capable of being tried together should be made on separate charge sheets and the subject of separate trials.

Cases referred to:—

(1) *Ja'afar bin Hussain v. Public Prosecutor* (1950) M.L.J. 154.

(2) *Amrita Lal Hazra v. Emperor* 42 Cal. 957.

(3) *Subrahmania Ayyar v. King-Emperor* 28 I.A. 257; 25 Mad. 61; 5 C.W.N. 866.

(4) *Pulukuri Kotayya v. King-Emperor* 74 I.A. 65.

(5) *Krishnaswami Pillai v. King-Emperor* 26 Mad. 125.

COURT OF APPEAL.

S. D. K. Peddie for the appellant.

E. Brown (Federal Counsel) for the respondent.

Mathew C.J. (delivering the judgment of the Court) : — The appellant was charged with two offences of consorting contrary to regulation 5(1) of the Emergency Regulations 1948, one offence of being in possession of a revolver contrary to regulation 4(1) (a) of the Emergency Regulations 1951 and one offence of being in possession of ammunition contrary to regulation 4(1) (b) of the Emergency Regulations 1951. The period which these offences covered was from 1948 to 1955. He was asked to plead to these four charges and eventually pleaded guilty to the two charges which related to consorting; he claimed trial to the two charges under regulation 4. He was convicted on his own plea in respect of the charges concerning consorting but was never sentenced, a practice which the Court has pointed out on more than one occasion is contrary to the plain provision of section 183(ii) Criminal Procedure Code. Sub-section (i) of section 165 Criminal Procedure Code reads :—

"If in one series of acts so connected together as to form the same transaction more offences than one are committed by the same person, he may be charged with and tried at one trial for every such offence."

The matter for decision is whether an offence of consorting contrary to regulation 5(1) and an offence of possession contrary to regulation 4(1) can be tried together. That offences under regulations 4(1) (a) and 4(1) (b) can normally be tried together has been decided in *Ja'afar bin Hussain v. Public Prosecutor*[1]. But we can find no decision covering the joint trial of consorting and possession. The best test which has been laid down in considering this matter is contained in *Amrita Lal Hazra v. Emperor*[2], where the following passage occurs at page 983 :—

"It is not possible to frame a comprehensive formula of universal application to determine whether two or more acts constitute the same transaction; but circumstances which must bear on the determination of the question in an individual case may be easily indicated: they are proximity of time, unity or proximity of place, continuity of action and community of purpose or design."

As regards time and place, the charges which we are considering range over a period of seven years and over a number of unspecified places in the State of Pahang. As regards continuity of action and community of purpose or design, the only community of purpose which could exist is the purpose of aiding the communist terrorists. It is so that many communist terrorists consort within the meaning of regulation 5(1) and carry arms contrary to regulation 4(1), but to succeed in a prosecution under regulation 4(1) there is no necessity to prove association with communist terrorists. There must be more than a general purpose or design, the purpose or design must be something particular and definite. In our view, the offences do not form part of the same transaction and therefore were wrongly joined.

The next question for determination is whether the trial of the charges together is an irregularity or an illegality. The manner in which to deal with such a question has in our view been clearly laid down in the two cases : *Subrahmania Ayyar v. King-Emperor*[3] and *Pulukuri Kotayya v. King-Emperor*[4]. So often does the question of distinction between an irregularity and an illegality arise that we think it as well to quote the following passage from the judgment in *Subrahmania Ayyar v. King-Emperor*[3] :—

"Their Lordships are unable to regard the disobedience to an express provision as to a mode of trial as a mere irregularity. Such a phrase as irregularity is not appropriate to the illegality of trying an accused person for many different offences at the same time, and those offences being spread over a longer period than by law could have been joined together in one indictment. The illustration of the section itself sufficiently shows what was meant.

The remedying of mere irregularities is familiar in most systems of jurisprudence, but it would be an extraordinary extension of such a branch of administering the criminal law to say that when the Code positively enacts that such a trial as that which has taken place here shall not be permitted that this contravention of the Code comes within the description of error, omission, or irregularity.

Some pertinent observations are made upon the subject by Lord Herschell and Lord Russell of Killowen [(1894) A.C. 494]. Where in a civil case several causes of action were joined, Lord Herschell says that 'if unwarranted by any enactment or rule it is much more than an irregularity'; and Lord Russell of Killowen in the same case says: 'Such a joinder of plaintiffs is more than an irregularity: it is the constitution of a suit in a way not authorised by law and the rules applicable to procedure'.

With all respect to Sir Francis Maclean and the other judges who agreed with him in the case of **In re Abdur Rahman and Keramat**, (27 Cal. 839), he appears to have fallen into a very manifest logical error in arguing that because all irregularities are illegal, as he says in a sense, and this trial was illegal, that therefore all things that may in his view be called illegal are, therefore, by that one adjective applied to them, become equal in importance and are susceptible of being treated alike."

The passage quoted *supra* is approved in *Pulukuri Kotayya v. King-Emperor*[4], in the following passage (at p. 75):—

"When a trial is conducted in a manner different from that prescribed by the Code (as in Subrahmania Ayyar's case — 28 I.A. 257), the trial is bad, and no question of curing an irregularity arises; but if the trial is conducted substantially in the manner prescribed by the Code, but

some irregularity occurs in the course of such conduct, the irregularity can be cured under s. 537, and none the less so because the irregularity involves, as must nearly always be the case, a breach of one or more of the very comprehensive provisions of the Code. The distinction drawn in many of the cases in India between an illegality and an irregularity is one of degree rather than of kind."

In our view, there can be no doubt that the trial together of these four charges was an illegality and the trial was therefore bad. When charges are wrongly joined, the prosecutor should be asked to elect before the pleas are taken which charge or charges he wishes to proceed on, and thus avoid a trial which is illegal and bad. As a practice, charges which are not capable of being tried together should be made on separate charge sheets and the subject of separate trials.

The learned Deputy Public Prosecutor has submitted that, as a plea of guilty to the charges relating to consorting was accepted and a conviction recorded, the trial took place only as to the charges of possession, and to this joinder no exception can be taken. We do not agree. The appellant was required to plead to four charges which were wrongly joined, and the fact that he pleaded guilty to two of them does not cure the original illegality. Support for this view is to be found in *Krishnaswami Pillai v. King-Emperor*[5].

We accordingly quash the convictions, and order a re-trial as to the charges relating to possession contrary to regulations 4(1)(a) and 4(1)(b) of the Emergency Regulations 1951.

Re-trial Ordered.

Solicitors for the appellant: *Shearn, Delamore & Co.*

YU MUNG SANG v. LEM NYOK & ORS.

[A. C. J. (Abbott J.) October 14, 1955]

[Seremban — Civil Appeal No. 5 of 1955]

Workmen's Compensation Ordinance, 1952, ss. 2 19 and 30 — Meaning of workman.

This was an appeal against the award of an arbitrator to the dependants of one Lai Hock, who died of injuries sustained when a tree fell upon him while he was taking part in some felling operations in connection with the business of the appellant. It appeared from the evidence that the appellant had agreed with one Chin Tong to pay $20 a ton for logs to be delivered at a certain point, Chin Tong agreeing to find the labour for felling the trees. The deceased was one of the labourers found and engaged by Chin Tong. The appeal was based upon two contentions: (1) the deceased was not a workman within the meaning of the Ordinance and (2) the arbitrator was wrong in giving the maximum amount of compensation.

Held: (1) by the combined operation of ss. 2 and 19 of the Workmen's Compensation Ordinance the deceased was a workman within the meaning of the Ordinance and the appellant was liable to pay compensation in respect of injuries caused to him; (2) the Court could not interfere with the discretion of the arbitrator in fixing the maximum compensation, as it was not shown that there was any error of principle on the part of the arbitrator in fixing the compensation.

WORKMEN'S COMPENSATION APPEAL.

R. H. V. Rintoul for the appellant.

Naidu (Dy. Comptroller for Labour) for the respondent.

Abbott J. : — The deceased died of injuries when a tree fell upon him while he was taking part in some felling operations in connection with the business of Yu Mung Sang, who is the appellant. The deceased's widow, on behalf of herself and her three children, made a claim for compensation against Yu Mung Sang under section 30 of the Workmen's Compensation Ordinance, No. 85 of 1952. The arbitrator held that the accident arose out of and in the course of the deceased's employment and he awarded the sum of $7,200 by way of compensation. The sum so awarded is the maximum allowed by section 8 of the Ordinance. This appeal is based upon two contentions, namely, that the deceased was not a workman within the meaning of the Ordinance and that the arbitrator was wrong in giving the maximum amount of compensation. It is necessary briefly to examine the terms and conditions upon which the deceased was engaged upon doing work for the appellant. The appellant had agreed with a certain Chin Tong to pay $20 a ton for logs to be delivered at a certain point; Chin Tong was to find labour for felling the trees. The deceased was one of the labourers found by Chin Tong and, moreover, the deceased provided his own lorry for taking the logs to the delivery point. For this Chin Tong paid the deceased $11 — $13 a ton. It is clear that Chin Tong was engaged under a contract made with appellant and that the deceased was working under a contract of service made between himself and Chin Tong. There was no direct contract between the deceased and the appellant. Section 2 of the Ordinance defines the expression "workman" as meaning "any person who has ... entered into ... a contract of service ... with an employer ...". If the law stood there the appellant would be bound to succeed in this appeal because at no time was there any privity of contract between himself and the deceased. However section 19 of the Ordinance makes other provisions, as follows — "(1) Where any person (in this section referred to as 'the principal') ... for the purpose of his trade or business contracts with any other person ... (in this section referred to as the contractor) for the execution by or under the contractor of the whole or any part of any work undertaken by the principal, the principal shall be liable to pay to any workman employed in the execution of the work any compensation which he would have been liable to pay if that workman had been immediately employed by him ....." It could be argued, but it